

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JESS RICHARD SMITH,

Petitioner,

v.

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. 2:24-CV-2091-LK-DWC

ORDER TO SHOW CAUSE

Petitioner Jess Richard Smith has filed a proposed petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis* (“IFP”). Dkts. 4, 4-1. Petitioner’s IFP application contains a certificate stating he has \$ 316.77 in his account at Coyote Ridge Correction Center. Dkt. 4 at 3. Because it appears Petitioner may have funds sufficient to pay the \$5.00 filing fee, Petitioner is directed to pay the filing fee or provide the Court with an explanation as to why he cannot.

Further, under Rule 4 of the Rules Governing § 2254 cases (“Section 2254 Rules”), the Court is required to perform a preliminary review of a habeas petition. The Court should dismiss a habeas petition before the respondent is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” *Id.* Under Rule 2 of the Section 2254 Rules, the petition must:

1 (1) specify all the grounds for relief available to the petitioner; (2) state the facts  
2 supporting each ground; (3) state the relief requested; (4) be printed, typewritten,  
3 or legibly handwritten; and (5) be signed under penalty of perjury by the petitioner  
4 or person authorized to sign it for the petitioner under 28 U.S.C. § 2242.

5 *Id.* at Rule 2(c). The petition must “substantially follow” a form prescribed by the local district  
6 court or the form attached to the Habeas Rules. *Id.* at Rule 2(d).

7 Petitioner states he is challenging a 2006 King County conviction. Dkt. 4-1 at 1.  
8 Petitioner has already challenged this conviction in this Court and any additional challenge will  
9 likely be successive. *See Smith v. Obenland*, 2:14-cv-517-BJR; *Smith v. Uttecht*, 2:21-cv-556-  
10 RSM. Therefore, to the extent Petitioner is challenging his 2006 King County conviction, he  
11 must show cause why this case should not be dismissed as successive.

12 It also appears Petitioner may be attempting to challenge a Department of Corrections  
13 infraction, not the 2006 King County conviction. *See* Dkt. 4-1. In the proposed petition, Petition  
14 states there was insufficient evidence to support that he failed to stand for a pat down search and  
15 that he is being detained in violation of §2254(d)(1)(2). An “action lying at the core of habeas  
16 corpus is one that goes directly to the constitutionality of the prisoner’s physical confinement  
17 itself and seeks either immediate release from that confinement or the shortening of its duration.  
18 With regard to such actions, habeas corpus is now considered the prisoner’s exclusive remedy.”  
19 *Preiser v. Rodriguez*, 411 U.S. 475, 503 (1973) (internal quotation omitted). “A civil rights  
20 action, in contrast, is the proper method of challenging conditions of confinement.” *Badea v.*  
21 *Cox*, 931 F.3d 573, 574 (9th Cir. 1991).

22 Here, it is not clear if Petitioner is challenging the constitutionality of his physical  
23 confinement or the conditions of his confinement. For example, Petitioner appears to be  
24 challenging the due process he received prior to an infraction. He does not allege the duration of  
his confinement was impacted by the alleged infraction. *See* Dkt. 4-1. As Petitioner has not

1 alleged facts sufficient to show this action is cognizable under § 2254, the Court finds Petitioner  
2 must show cause why this action should not be dismissed for failure to state a claim.

3 Accordingly, for the above stated reasons, if Petitioner wishes to proceed with this action,  
4 on or before **February 7, 2025**, Petitioner must:

- 5 1. Show cause why his IFP application should not be denied. In the alternative,  
6 Petitioner may pay the \$5.00 filing fee on or before February 7, 2025; and
- 7 2. File an amended proposed petition that names the proper respondent,<sup>1</sup> clearly  
8 articulates the conviction he is challenging, the grounds for relief he is raising, a brief  
9 statement of facts supporting each ground for relief, and an explanation as to how  
10 those grounds are cognizable under § 2254.

11 If Petitioner fails to respond to this Order by (1) showing cause or paying the filing fee  
12 and (2) filing an amended petition, the Court will recommend dismissal of this matter. Petitioner  
13 may also move to voluntarily dismiss this action.

14 The Clerk's Office is directed to re-note Petitioner's IFP Application (Dkt. 4) for  
15 February 7, 2025. The Clerk is also directed to provide Petitioner with a blank form for filing 28  
16 U.S.C. §2254 petition.

17 Dated this 8th day of January, 2025.

18 

19 David W. Christel  
20 United States Magistrate Judge

21 \_\_\_\_\_  
22 <sup>1</sup> Under Rule 2(a) of the Rules Governing Section 2254 Cases, "the petition must name as respondent the  
23 *state officer who has custody*." (emphasis added). Petitioner's failure to name the correct respondent deprives the  
24 Court of personal jurisdiction. *Smith v. Idaho*, 392 F.3d 350, 354-55 (9th Cir. 2004). Here, Petitioner has named the  
State of Washington Department of Corrections as the Respondent. The proper respondent would be the  
superintendent at Coyote Ridge Corrections Center, where Petitioner is incarcerated. If Petitioner wishes to proceed  
with this action, he must name a proper respondent.